

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

COURTNEY THOMPkins, ET AL

Civil Action

Plaintiff,

No. 2:24-CV-8

v.

MCKEESPORT POLICE DEPARTMENT,  
et al

Defendants.

**MOTION TO DISMISS FIRST AMENDED COMPLAINT (ECF 21)**

Now comes Allegheny County by Assistant County Solicitors Lisa G. Michel and Philip P. Roberts and submit this Motion to Dismiss the Amended Complaint for Failure to State a claim.

1. Plaintiffs originated this suit in the Court of Common Pleas of Allegheny County by Writ of Summons in December 2022. A complaint was filed in December 2023 and the matter removed to this Court on January 3, 2023. A copy of the docket in the Court of Common Pleas is attached as Exhibit “A.”
2. On December 20, 2020, City of McKeesport Police Officer Gerasimos Athans arrested Koby Lee Francis for violation of a Protection from Abuse Order. A copy of the Order is attached as Exhibit “B.” In the course of taking Mr. Francis into custody, Mr. Francis fired a firearm at Officer Athans, wounding him, and fled the scene on foot. Amended Complaint, ECF 21, ¶3.

3. A manhunt immediately ensued for the armed fugitive Mr. Francis and police from other jurisdictions, including that Allegheny County Police assisted the McKeesport Police Department in searching for him. *Id.*
4. The Amended Complaint alleges that police officers conducted warrantless searches of the homes of Plaintiff Kim Neal, mother of Koby Lee Francis and resident of McKeesport and Courtney Thompkins, no familial relation to Mr. Francis.
5. The Amended Complaint also alleges that Ezra Dixon was the subject of a traffic stop conducted solely by City of McKeesport police officers.
6. Plaintiffs aver that the Allegheny County is liable to them under a number of legal theories set forth in ten Counts captioned as follows:
  - Count I- 42 U.S.C. §1983 Unreasonable Search and Seizure in violation of the Fourth Amendment to U.S. Constitution (All Defendants)
  - Count II- Violation of Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania (All Defendants)
  - Count III - 42 U.S.C. §1983 Excessive Force (All Defendants)
  - Count IV- Violation of Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania and Fourth Amendment of the U.S. Constitution Excessive Force (Plaintiffs Neal and Thompkins against All Defendants)
  - Count V- 42 U.S.C. §1983 Racial Discrimination in Violation of the Equal Protection Clause (Against all Defendants)
  - Count VI- 42 U.S.C. §2000d Racial Discrimination in Violation of the Title VI of the Civil Rights Act of 1964 (Against City of McKeesport and

Allegheny County and Defendants Alfer, McDonough and Steel in the Official Capacities)

- Count VII - 42 U.S.C. §1983 Civil Conspiracy to Violate Plaintiffs' Rights under the Fourth Amendment to the United States Constitution (Against all Defendants and Does)
- Count VIII – Civil Conspiracy to Violate Plaintiffs Rights under Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania and Fourth Amendment of the United States Constitution (All Defendants)
- Count IX- Intentional Infliction of Emotional Distress (Against All Defendants)
- Count X- 42 U.S.C. §1983 Municipal Liability.

7. Mr. Dixon states no cognizable claim against Allegheny County.

8. Plaintiffs state no cognizable claim under the Pennsylvania Constitution.

9. Plaintiffs fail to state any cognizable claim for civil conspiracy.

10. Plaintiffs cannot make out any cognizable claim under 42 U.S.C. §2000d .

11. Plaintiffs cannot state any cognizable claim against Allegheny County for Intentional Infliction of Emotional Distress as a matter of law.

12. Plaintiffs' municipal liability claim against Allegheny County fails as a matter of law.

13. Plaintiffs claims for excessive force fail against Allegheny County.

14. Even if Plaintiff Thompkins and Neal may make out a facially valid claim against other Defendants, for Fourth Amendment violations, they cannot make out such claims against Allegheny County.

15. Plaintiffs fail to make out the elements of any of their stated causes of action as to Allegheny County.

16. For the reasons stated in the brief filed contemporaneously with this Motion, the Amended Complaint fails to state any claim upon which relief can be granted.

**Wherefore,** Defendants Allegheny County respectfully demand that the Court dismiss the Amended Complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Lisa G. Michel

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/s/ Philip P. Roberts

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